

DETENTIONS AND TRIALS UNDER SECURITY LAWS

NUMBER OF PEOPLE DETAINED

Questioned in the Assembly about people detained under the Security laws, the Minister of Police said¹ that during 1972, 16 people were detained under the Criminal Procedure Act (which contains the "180-day clause"²). They were held for periods ranging from 3 to 80 days, the Minister continued, none had been in solitary confinement, and all had since been charged or released.

Asked about detentions under the Terrorism Act,³ the Minister replied, "Except to confirm that a number of persons were arrested . . . during 1972, I consider it not to be in the public interest to disclose the required information." He did say, however, that eleven persons were that year charged with contraventions of the Act.⁴ Three of them had been convicted, but some cases had not yet been concluded. None of the detainees had died while in detention.

The Deputy Minister said on 6 April⁵ that six persons in the Transkei were detained during 1972 under Proclamation 400 of 1960. Five of them were released without charges having been laid, and the sixth was still in detention at the end of the year.

At the Durban Legal Aid Conference, Professor S. A. Strauss criticised the total elimination of judicial control over certain forms of detention. (As reported in previous issues of this *Survey*, very many others have made similar criticisms.)

Speaking at an official function in July,⁶ the Minister of Justice stated that the situation in South Africa was not "normal". A new situation existed, unknown in terms of traditional concepts of constitutional law. "It is a situation which, without a doubt, qualifies as an emergency situation and it surely justifies the provision and implementation of measures which do not in every respect meet the requirements of the so-called rule of law," he said.

PROVISION FOR DETENTION IN THE MSINGA DISTRICT

Proclamation No. 103 of 1973, gazetted on 1 May, applies to the African district of Msinga in Natal. It provides that

¹ 23 March, Hansard 7 col. 520.

² See last year's *Survey*, page 83, for the terms of these security laws.

³ Hansard 1 Question cols. 18-19.

⁴ It appears that this information was incomplete. See 1972 *Survey*, pages 96-105.

⁵ Hansard 9 col. 615.

⁶ *Star*, 27 July.

Essop, and Mrs. Desai was described on page 100 of last year's *Survey*. All had been found guilty of charges under the Terrorism Act, and each was sentenced to five years' imprisonment. Mrs. Desai and Mr. Essop were refused leave to appeal against their convictions, but Mr. Essack and Mr. Moodley were allowed to do so. During February they were granted bail of R5 000 each, and ordered to report to the police twice daily.

Their appeal was heard by three judges on 28 September. Mr. Justice Muller found that the State had failed to prove the allegations against the two men. He upheld their appeals. Mr. Justice Trollip concurred, thus the appeal succeeded, although Mr. Justice Rumpff gave a dissenting judgment.⁹

Mr. Kadar Hassim and twelve others

As described on page 96 of last year's *Survey*, thirteen men (Indians, Coloured, and African), alleged to be members of the African People's Democratic Union of South Africa (Apdusa), were in April 1972 found guilty of various charges under the Terrorism Act. The sentences imposed on each count were to run concurrently, the total sentences to be served ranging from five to eight years. During April, the Appellate Division dismissed the appeal of these men against their conviction.

TRIALS DURING 1973

Mr. A. Moumbaris and five others

On page 105 of the 1972 *Survey* mention was made of the commencement of the trial, under the Terrorism Act, of Mr. A. Moumbaris (an Australian citizen), Mr. J. W. Hosey (a Northern Irish citizen), and four Africans from the Republic, Messrs. T. Cholo, M. J. Mpanza, P. A. Mtembu, and G. S. Sijaka.

Mr. Moumbaris, with his wife, had been arrested on the Botswana border on 19 July 1972. His wife was detained by the police for four months, but because she was pregnant, was then released and deported to France, where her parents lived. Mr. Moumbaris and the other accused, who were arrested at about the same time, were held in detention.

Their summary trial opened in the Supreme Court, Pretoria, on 14 March and, with intermissions, lasted until 20 June. The men were charged jointly under the Terrorism Act. There were 19 counts, in each of which one or more of the accused were mentioned. Five of them (excluding Mr. Hosey) were accused of having conspired with one another, and with A.N.C. members and communists overseas, including Oliver Tambo, Joe Slovo, and Dr. Yusuf Dadoo, to encourage violent revolution in the Republic. The conspiracy was stated in the indictment to have had its origins in Russia, England, and Somaliland.

⁹ *Rand Daily Mail*, 29 September.

According to the indictment and evidence given by witnesses for the State (53 of whom were called), Mr. Moumbaris was a "contact man", and undertook a series of six "courier" trips between London and South Africa, his suitcases having false bottoms. He was stated to have supplied certain Africans in the Republic with arms, ammunition, a radio, false documents, materials for secret writing, and other items. He reconnoitred the Transkeian coast to find suitable places for secret seaborne landings. He also reconnoitred the borders of Botswana and Swaziland, went to these countries to meet Africans returning after military training abroad, and helped them to cross the borders secretly into the Republic.

Two African witnesses admitted that they had undergone military training and training in subversion and propaganda in African states to the north and/or in Russia. They were arrested after returning to the Republic, and later decided to give evidence for the State. Both said that they had met the four African accused during various stages of their training abroad.

These African accused, it was stated, had undergone similar training. Afterwards they met one another in Somalia, from where they embarked in a motor yacht intending to land secretly on the Transkeian coast. In the event, the Greek crew of the yacht did not take them beyond Mombasa. They later went to Swaziland, from where Mr. Moumbaris helped them to enter the Republic. Some of the accused were stated to have planned to recruit other Africans in the Transkei and train them in guerrilla warfare.

Mr. Hosey was accused of distributing, or causing to be distributed, pamphlets containing anti-White and anti-government propaganda, and of attempting to establish contact with one or more of the accused to deliver money and documents.

On 20 June, Mr. Justice Boshoff found all six accused guilty of one or more of the charges against them. Mr. Moumbaris was found guilty, *inter alia*, of having maintained contact between people in London and the accused, and of assisting the accused. He was sentenced to twelve years' imprisonment.

The four Africans were found guilty, *inter alia*, of undergoing military training abroad, and of returning to South Africa in order to promote violent revolution. The judge found that their activities had been closer akin to treason than were those of Mr. Moumbaris. Each received a fifteen years' sentence.

Mr. Hosey, who was found to have played a very minor part in the conspiracy, received the minimum sentence provided for in the Terrorism Act — that of five years.

The two whites applied for leave to appeal, which was granted to Mr. Hosey but refused to Mr. Moumbaris. It was announced that Mr. Hosey's appeal would be heard by three judges of the Appellate Division on 27 November. The appeal was dismissed.

Mr. Mosebudi Mangena

It was mentioned in an earlier chapter that Mr. Mosebudi Mangena, said to be national organiser of the Black People's Convention (B.P.C.), was arrested during June. He was charged under the Terrorism Act. On 3 October he appeared before the Supreme Court in Grahamstown. Two African policemen are reported to have said in evidence that they met Mr. Mangena casually, for the first time, on a train travelling to Port Elizabeth. They were in plain clothes. They fell into conversation, during which Mr. Mangena said he was recruiting members for the B.P.C. He offered one of them the job of organiser in the northern Transvaal. Asked what was done with money collected by way of membership subscriptions, Mr. Mangena replied that in the first place it was used to pay salaries of B.P.C. officials. At a later stage it would be used to send young members abroad for military training, after which they would return and kill white people, homeland leaders, and policemen. The witnesses said that they reported the conversation to the Security Police in Port Elizabeth. Shortly afterwards, they returned to their duties in the northern Transvaal.

Mr. Mangena was arrested at the home of the Port Elizabeth chairman of the B.P.C., and certain documents were taken from him. He was then released, but was re-arrested later.

Counsel for the defence said he found it strange that Mr. Mangena should have disclosed incriminating information to complete strangers, and have offered a post to one of them. He asked why the original reports made by the policemen to the Security Police in Port Elizabeth were not produced in court, rather than affidavits made by them at a later stage. He was told that the original reports had been destroyed.

Mr. Acting Justice de Wet, sitting with two assessors, found Mr. Mangena guilty of participating in terrorist activities, and sentenced him to five years' imprisonment.¹⁰ Leave to appeal was sought, but was refused.

Arrests in Vereeniging

In mid-October, five African men and two women were arrested in Sharpeville, Vereeniging, and detained under the Terrorism Act.

It was reported on 28 November, however, that all except one man, Mr. Nkutsoeu Matsau, had been released. The Attorney-General had not as yet decided whether Mr. Matsau should be prosecuted.

SCORPIO

The activities of "Scorpio" were described on page 78 of last year's *Survey*. Briefly, during 1971 and 1972 there were a

¹⁰ *Rand Daily Mail*, 4 October.

number of attacks on the homes and/or property of people and organizations, mainly in Cape Town, communist slogans were painted on walls, and libellous leaflets distributed. A church hall was gutted by fire. It was stated on some of the leaflets that they had been issued by "Scorpio", and after various attacks, newspapers were informed by means of anonymous telephone calls that "Scorpio has struck again". The victims of attacks were opponents of the Government's racial policies.

In October, police arrested Mr. Desmond H. Welthagen and Mr. David A. Beelders after raiding their homes. It was reported¹¹ that in Mr. Welthagen's home the police found a number of leaflets that were blank except for the legend "Issued by Scorpio", and 100 fuse-igniters. He was charged with six counts of having issued pamphlets containing criminal libels, and one count of illegally possessing explosives. Further charges, of arson and of malicious damage to property, were withdrawn by the prosecutor, who said that they would be difficult to prove. The magistrate acquitted Mr. Welthagen on the explosives charge because, he stated, the State had not shown that the accused had not possessed a permit allowing him to have these. But he was fined R50 (or 25 days) on each of the six counts of criminal libel, also sentenced to a month's imprisonment on each count suspended for three years. The prosecutor did not proceed with an allegation that Mr. Welthagen was, in fact, Scorpio.

Mr. Beelders was fined R150 for having painted the words "Communist den" on a wall belonging to the University of Cape Town.

The Press pointed out that a number of the Scorpio crimes had not been solved. The attacks ceased for the time being, but in November there was a new, less serious, wave of vandalism in Cape Town.

¹¹ *Star*, 11 December, and *Sunday Times* and *Sunday Express*, 24 December 1972.